

<sup>2</sup> The Board notes that, following the January 4, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

which he was without fault, because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits for the period June 1, 2006 through July 18, 2020, without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$475.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On December 13, 2005 appellant, then a 63-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 30, 2005 he injured his lower back when lifting boxes while in the performance of duty. He stopped work on December 1, 2005 and returned to work on December 12, 2005. OWCP accepted the claim for lumbar sprain/strain, lumbosacral spondylosis without myelopathy, and degeneration of lumbosacral intervertebral disc. A February 5, 2006 notification of personnel action (PS Form 50) noted appellant's retirement plan as "K" Federal Employees Retirement System (FERS) and Federal Insurance Contributions Act (FICA). OWCP paid him wage-loss compensation on its supplemental rolls from February 5, 2006 through August 30, 2008 and on its periodic compensation rolls as of August 31, 2008.

On November 7, 2019 OWCP forwarded a FERS/SSA benefits calculation worksheet to the SSA to obtain information necessary for a determination of whether an offset of compensation benefits was required.

On November 21, 2019 OWCP received from SSA a November 13, 2019 FERS/SSA dual benefits calculation form, which indicated that appellant had been in receipt of SSA age-related retirement benefits since June 2006. The form showed appellant's SSA benefit rates with and without a FERS offset as follows: beginning June 2006, the SSA rate with FERS was \$1,166.00 and without FERS was \$788.60; beginning December 2006, the SSA rate with FERS was \$1,205.00 and without FERS was \$814.60; beginning December 2007, the SSA rate with FERS was \$1,232.00 and without FERS was \$833.20; beginning December 2008, December 2009, and December 2010, the SSA rate with FERS was \$1,304.00 and without FERS was \$881.60; beginning December 2011, the SSA rate with FERS was \$1,351.00 and without FERS was \$913.20; beginning December 2012, the SSA rate with FERS was \$1,373.00 and without FERS was \$928.70; beginning December 2013, the SSA rate with FERS was \$1,394.00 and without FERS was \$942.60; beginning December 2014 and December 2015, the SSA rate with FERS was \$1,418.00 and without FERS was \$958.60; beginning December 2016, the SSA rate with FERS was \$1,422.00 and without FERS was \$961.50; beginning December 2017, the SSA rate with FERS was \$1,450.00 and without FERS was \$980.70; and beginning December 2018, the SSA with FERS was \$1,491.00 and without FERS was \$1,008.10.

On December 19, 2019 OWCP again forwarded a FERS/SSA benefits calculation worksheet to SSA. On January 17, 2020 it received from SSA a January 10, 2020 FERS/SSA dual benefits calculation form, which indicated that, beginning December 2019, appellant's SSA rate with FERS was \$1,515.20 and without FERS was \$1,024.20.

OWCP completed a FERS offset calculation worksheet on July 29, 2020. It calculated the overpayment amount by determining the daily FERS offset amount and multiplying that amount

by the number of days in each period June 1, 2006 through July 18, 2020, resulting in a total overpayment of \$74,899.31. The form indicated that: from June 1 through November 30, 2006, appellant received an overpayment in the amount of \$2,276.84; from December 1, 2006 through November 30, 2007, appellant received an overpayment in the amount of \$4,697.67; from December 1, 2007 through November 30, 2008, appellant received an overpayment in the amount of \$4,807.07; from December 1, 2008 through November 30, 2011, appellant received an overpayment in the amount of \$15,248.18; from December 1, 2011 through November 30, 2012, appellant received an overpayment in the amount of \$5,282.47; from December 1, 2012 through November 30, 2013, appellant received an overpayment in the amount of \$5,346.25; from December 1, 2013 through November 30, 2014, appellant received an overpayment in the amount of \$5,431.68; from December 1, 2014 through November 30, 2016, appellant received an overpayment in the amount of \$11,071.04; from December 1, 2016 through November 30, 2017, appellant received an overpayment in the amount of \$5,541.18; from December 1, 2017 through November 30, 2018, appellant received an overpayment in the amount of \$5,647.07; from December 1, 2018 through November 30, 2019, appellant received an overpayment in the amount of \$5,810.72; and from December 1, 2019 through July 18, 2020, appellant received an overpayment in the amount of \$3,739.15.

On August 20, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$74,899.31 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period June 1, 2006 through July 18, 2020 to offset his SSA age-related retirement benefits that were attributable to federal service. It also determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised him that he could request a waiver of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, OWCP further provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a prerecoument hearing. Appellant did not respond.

By decision dated January 4, 2021, OWCP finalized the August 20, 2020 preliminary overpayment determination for the period June 1, 2006 through July 18, 2020.<sup>3</sup> It found that appellant had received an overpayment of compensation in the amount of \$74,899.31, which was reduced to \$48,961.60 by compromise. OWCP further found that he was not at fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as he had not submitted evidence to substantiate that adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. It required recovery by deducting \$475.00 every 28 days from appellant's continuing compensation payments.

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<sup>3</sup> OWCP erroneously noted the overpayment period as June 1, 2006 through July 19, 2020. The overpayment was calculated through July 18, 2020, as noted in the preliminary overpayment determination.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.<sup>4</sup> Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>5</sup> When an overpayment of compensation has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.<sup>6</sup>

Section 10.421(d) of FECA implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-based benefits that are attributable to federal service of the employee.<sup>7</sup> FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>8</sup>

The determination that the debt has been compromised does not carry the right to a hearing or to review by the Board.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$74,899.31, compromised to \$48,961.60, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period June 1, 2006 through July 18, 2020, without an appropriate offset.

The evidence of record indicates that, while appellant was receiving wage-loss compensation benefits under FECA, he also was receiving SSA age-related retirement benefits based upon his federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.<sup>10</sup> The information provided by SSA established that appellant

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> *Id.* at § 8129(a).

<sup>7</sup> 20 C.F.R. § 10.421(d); *see T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

<sup>8</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see M.S.*, Docket No. 20-0068 (issued May 14, 2021).

<sup>9</sup> *See* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.6 (September 2020).

<sup>10</sup> *Id.*

received SSA age-related retirement benefits that were attributable to federal service during the period June 1, 2006 through July 18, 2020. Consequently, the fact of overpayment has been established.<sup>11</sup>

To determine the amount of the overpayment, the portion of SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amounts of SSA age-related retirement benefits that were attributable to federal service. SSA provided its benefit rates with FERS and without FERS for specific periods June 2006 through December 2019. OWCP provided its calculations for each relevant period based on the SSA worksheet and properly determined that appellant received an overpayment of compensation in the amount of \$74,899.31, compromised to \$48,961.60.

The Board, thus, finds that appellant received an overpayment of compensation in the amount of \$74,899.31, compromised to \$48,961.60, for the period June 1, 2006 through July 18, 2020.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>12</sup>

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.<sup>13</sup>

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.<sup>14</sup> Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>15</sup>

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<sup>11</sup> *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>12</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see M.C.*, Docket No. 19-0699 (issued February 12, 2020).

<sup>13</sup> *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>14</sup> 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. *Supra* note 9 at Chapter 6.400.4a(2) (September 2020).

<sup>15</sup> *Id.* at § 10.437(a)(b).

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.<sup>16</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>18</sup>

In its preliminary overpayment determination dated August 20, 2020, OWCP explained the importance of providing the completed overpayment questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income, expenses, and assets. Appellant, however, did not respond and failed to provide any financial information. As he did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.<sup>19</sup> Appellant did not establish that adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience<sup>20</sup> Therefore, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 3**

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.<sup>21</sup>

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<sup>16</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>17</sup> *Id.* at § 10.438(b).

<sup>18</sup> *Id.* § 10.436.

<sup>19</sup> *Supra* note 9 *M.S.*; *D.C.*, Docket No. 19-0118 (issued January 15, 2020); *see S.B.*, Docket No. 16-1795 (issued March 2, 2017).

<sup>20</sup> *Id.*

<sup>21</sup> 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

Section 10.441(a) of OWCP's regulations<sup>22</sup> provides in pertinent part:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”<sup>23</sup>

Under OWCP's procedures, the compromise of all or part of the overpayment and any charges may be made depending upon the individual claimant's financial circumstances in order to set a repayment schedule. Such a determination is made at the time the repayment schedule is established.<sup>24</sup> Compromise is a matter which rests in the discretion of OWCP and is not subject to review by the Board.<sup>25</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$475.00 every 28 days from appellant's continuing compensation payments.

OWCP gave due regard to the financial information submitted, as well as the factors set forth in 20 C.F.R. § 10.441, including the compromised overpayment amount, and found that this method of recovery would minimize resulting hardship.<sup>26</sup> When, as in this case, no response is received to the preliminary overpayment determination, OWCP should set the rate of repayment at 25 percent of the 28 days net compensation amount.<sup>27</sup> The record reflects that appellant was earning \$1,902.77 for 28 days of net compensation benefits. OWCP calculated that 25 percent of the 28-day net compensation amount equates to \$475.69. The Board finds that OWCP properly required recovery of the overpayment by deducting \$475.00 every 28 days from appellant's continuing compensation benefits.

On appeal appellant requests debt forgiveness be considered. As he did not provide a completed Form OWCP-20 overpayment recovery questionnaire and supporting financial

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<sup>22</sup> *Id.* at § 10.441(a).

<sup>23</sup> *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>24</sup> *Supra* note 9 at Chapter 6.500.6 (September 2020).

<sup>25</sup> *Id.*; *see supra* note 9; *M.S.*, Docket No. 20-0068 (issued May 14, 2021).

<sup>26</sup> *M.S., id.*; *M.B.*, Docket No. 20-1578 (issued March 25, 2021).

<sup>27</sup> *Supra* note 9 at Chapter 6.500.8(c)(1) (September 2018); *see D.C.*, Docket No. 19-0118 (issued January 15, 2020).

documentation as requested in OWCP's August 20, 2020 letter, OWCP properly denied waiver of recovery of the overpayment.<sup>28</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$74,899.31, compromised to \$48,961.60, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period June 1, 2006 through July 18, 2020, without an appropriate offset, and that OWCP properly denied waiver of recovery of the overpayment. The Board further finds that OWCP properly required recovery of the overpayment by deducting \$475.00 from his continuing compensation payments every 28 days.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 4, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>28</sup> See 20 C.F.R. § 10.438 (in requesting waiver, the overpaid individual has the responsibility for providing financial information); *see also L.K.*, Docket No. 17-1393 (issued March 20, 2018).